IN THE HIGH COURT OF JUDICATURE AT BOMBAY

T. & I. J.

NOTICE OF MOTION NO. 3036 OF 2004

IN

TEST. PETITION NO.698 OF 2004

Shivaji R. Sawant. .... Petitioners.

vs.

Dinesh R. Sawant & Anr. .... Respondents.

Mr. M.P. Shukla for the petitioners.

Mr. A. Narula with R. Narula i/by Jahangiani, Narula & Assoc. for respondent no.1.

CORAM : S.U. KAMDAR, J.

DATE : 10th August, 2005.

P.C.

. By the present notice of motion the applicant is seeking a relief that till the disposal of the petition the residential room no. 3 situated in Mohamad Ravji Building No. 109, 1st floor, Dadar (E), Mumbai 400 014 be protected and the same should not be permitted to be alienated, transferred, sold or encumbered in any manner whatsoever. The shop is forming part of the will which has been left by the deceased. In the will the deceased in so far as the

said shop is concerned it has been stated as under :-

> " In the year 1977 myself and my wife Sau. Janakibai Ramchandra Sawant purchased on ownership basis a shop no. 2 in 126, Navin Asha Co-operative Society Ltd., (Regd. No. REG No. MUM.H.S.G. of 2347 of 1970) Dadasaheb Phalke Road, Dadar (East), Mumbai-400 014 from the registered society viz. Narayan Mandir Samiti Trust' in the name of my son Dinesh Ramchandra Sawant at his age of twenty two. For this purpose myself and wife spent our self earned savings and ornaments. Hence, myself, my wife and my 5 sons have equal right and interest over the said property. I have right to make desposition of said property as per my desire. Since myself and my wife have purchased the said property by putting in hard work, I have absolute right over the same and as I have absolute right to make disposition of the said property as per my desire, I make my this last Will in order that there should not be any dispute among my children after my death."

2. It is the contention of the learned counsel for respondent no. 1 that the claim made in respect

of the shop cannot be entertained and gone into in testamentary jurisdiction and, therefore, no interim relief can be passed. Today the property is forming part of the will and I must protect all the properties which are forming part of the will till the petition is finally decided or the issues pertaining to the title of the property is determined by the civil Court. I am not deciding any title of the said shop premises in the present petition. However, till the time the civil proceedings are initiated either during the pendency of the probate petition or on grant of the probate petition the said property of the deceased is required to be protected. In view thereof, there shall be an interim order in terms of prayer clause (a) restricted only to the shop no. 2 - item no. 2 of the schedule.

3. Motion is disposed of accordingly. However, there shall be no order as to costs.